

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 10541 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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RAVINDRA KRISHNA KULKARNI**Versus****STATE OF GUJARAT AND ANOTHER**

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Appearance :

MR SUNIT S SHAH for Applicant.

MR PRADIP BHATE, APP for Respondent No. 1.

NOTICE UNSERVED for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**Date : 13/02/2006****ORAL JUDGMENT**

RULE. Mr.Pradip Bhate, learned APP waives service of notice of rule on behalf of the respondents. With the consent of the parties, matter is taken up for final hearing today.

By filing this application, applicant has prayed that the proceedings instituted by Food Inspector – respondent No.2, which is registered as Criminal Case No.4509/2002 filed before learned Judicial Magistrate, First Class, Second Court, Ankleshwar, Bharuch and process issued thereon may be quashed. Applicant is accused No.16 in the aforesaid complaint. It is alleged in the complaint that the company has mis-branded the food product and has accordingly committed offence under Section 2 (ix) (k) and (e) read with Section 7 (ii) (v) of the Food Adulteration Act, 1954 and accordingly, the applicant is liable to be convicted under Section 16 of the said Act. It is also alleged in the complaint that a sample of 500 grams of Glucon-D – Orange was taken by Food Inspector and after following necessary procedure the same was sent for analysis to the Public Analyst. After receiving the report of Public Analyst, aforesaid complaint is filed against the company, all its directors as well as against the manager, as it was prima facie found that said product is mis-branded.

Mr.Sunit Shah, learned advocate for the applicant submitted that so far as present applicant is concerned, he was not even the director of the company and there is nothing to show that he was enrolled as director of the company. It is submitted by Mr.Shah that the applicant was not in any way actively associated with the affairs of the company. It is submitted by Mr.Shah that in fact the applicant is a shareholder and he has nothing to do with the business and affairs of the company. He further submitted that even otherwise in the complaint no allegations are made so far as present applicant is concerned. Therefore, the complaint against the applicant is not maintainable. To substantiate his say, Mr.Shah, has relied upon the decision of the Apex Court in

S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, reported in 2005 (8) SCC 89.

On the other hand, Mr.Bhate, learned APP submitted that it may be true that the applicant is a shareholder and he may not be actively associated with the business of the company but since name of the applicant was given by the company, the Food Inspector has joined him in the complaint.

Considering the fact that no specific role is attributable to the applicant and simply because the company has given name of the applicant, and since it is pointed out to the Court that the applicant was not even enrolled as director, in my view, it would not be just and proper to continue present proceedings against the present applicant. Considering the aforesaid aspect of the matter, this application is allowed. It is, however, clarified that at the time of trial if the Court is of the opinion that any specific role of the applicant is found or if it comes in evidence that the applicant has also committed the offence as per the complaint, it will be open for the Magistrate to follow the procedure under Section 319 of Criminal Procedure Code as well as under the provisions of Section 20-A of the Prevention of Food Adulteration Act, 1954 and the applicant can be joined as accused and tried before the trial is concluded. Mr.Shah has also submitted that if anything is found against the applicant, he has no objection on applicant being joined as accused in trial at any point of time.

In view of what is stated herein above, this application is allowed. Criminal Case No.4509 of 2002 filed before learned Judicial Magistrate,

First Class, Second Court, Ankleshwar, Bharuch and process issued thereon is quashed so far as present applicant is concerned. Rule is made absolute accordingly. It is clarified that this order will have no bearing so far as rest of accused are concerned and this order is passed only in favour of the present applicant, who is accused No.16 in the complaint.

(P.B.MAJMUDAR, J.)

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